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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID SCOTT HARRISON,

Defendant and Appellant.

D070162

(Super. Ct. No. CRN16848)

APPEAL from orders of the Superior Court of San Diego County, K. Michael Kirkman, Judge. Affirmed.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, and Thomas D. Bunton, Deputy County Counsel, for Plaintiff and Respondent.

I

INTRODUCTION

David Scott Harrison appeals from postjudgment orders denying his motions to unseal and obtain unredacted copies of court records. He contends the court's orders violate the California Public Records Act (Gov. Code, § 6250 et seq.) and rules 2.550-2.551 of the California Rules of Court.¹ We conclude these authorities do not apply to the records Harrison seeks and Harrison has not otherwise established the court erred in denying his motions. We, therefore, affirm the orders.

II

BACKGROUND

The court found Harrison guilty of the first degree murder of his ex-wife and found true an allegation he used a knife to commit the crime. The court sentenced him to an aggregate term of 26 years to life to be served consecutively to his sentence in a related federal court case. We affirmed the judgment on appeal. (*People v. Harrison* (June 30, 1992, D012506) [nonpub. opn.].)

Harrison pursued a third party culpability defense at trial. Specifically, he suggested the actual murderer was his former lover, a key prosecution witness. (*People v. Harrison, supra*, D012506 at p. 11.) A few months after Harrison's conviction, the former lover committed suicide in another state. Police records related to the suicide are in the court's file under seal.

¹ Further rule references are to the California Rules of Court unless otherwise stated.

Harrison initially sought copies of the records by submitting a request under the California Public Records Act to the district attorney's office. The district attorney's office possessed only one document from the records, which it provided to Harrison. (*Harrison v. San Diego County District Attorney* (Mar. 18, 2016, D068603) [nonpub. opn.], at pp. 2–3.)

Harrison then filed a motion seeking to unseal and obtain copies of the records from the court's file. He argued the original sealing order was improper because the court did not comply with the requirements in rule 2.550. He also argued the court had authority to revisit the order and should revisit it because disclosure of the information contained in the records was necessary for him to collaterally attack his conviction.

The court did not unseal the records. However, the court provided Harrison with copies of the records, except the court redacted the personal identifying information of a handful of civilian witnesses. The court also directed Harrison not to use the records for any purpose other than to address legal issues in his criminal case.

Harrison subsequently filed a motion seeking unredacted copies of the records. The court denied the motion.

III

DISCUSSION

A

On appeal, Harrison appears to challenge the court's original sealing order as well as the orders denying his motions to unseal the records and obtain unredacted copies of them. Regarding Harrison's challenge to the original sealing order, the order is not part

of the appellate record, it was ostensibly made 27 years ago, and Harrison has not established it is presently appealable. In addition, Harrison's arguments in support of the order's impropriety rely exclusively on authorities that did not exist when the order was made. (See rules 2.550-2.551; see also former rules 243.1-243.2, *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1217–1218 (*NBC*).) Accordingly, Harrison has not established the court erred in issuing the original sealing order.

B

Regarding Harrison's challenge to the orders denying his motions to unseal the records and obtain unredacted copies of them, Harrison chiefly relies on the California Public Records Act. However, Harrison did not seek the records from the court under this act and, regardless, this act does not apply to state court records.² (Gov. Code, § 6252, subd. (f)(1); *Sander v. State Bar of California* (2013) 58 Cal.4th 300, 309; *Copley Press, Inc. v. Superior Court* (1992) 6 Cal.App.4th 106, 111; *Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 77.)

Harrison also relies on rules 2.550 and 2.551, which provide the standards and procedures for the sealing and unsealing of trial court records. (Rule 2.550(a).) However, "[t]hese rules do not apply to records that are required to be kept confidential by law." (Rule 2.550(a)(2).)

² Rule 10.500 provides for comparable public access to judicial administrative records. (See Gov. Code, § 68106.2, subd. (g).) However, the records at issue in this case are not judicial administrative records and Harrison did not seek access to them under this court rule.

The records at issue in this case are inferably privileged (see Evid. Code, § 1040 [official information privilege]) and were submitted to the court for an in camera review (Evid. Code, § 915, subd. (b)) to determine whether their disclosure was required under *Brady v. Maryland* (1963) 373 U.S. 83, 87 [prohibiting a prosecutor from suppressing favorable evidence material to a defendant's guilt or punishment]. Records examined by a court in camera "must be filed with the clerk under seal and must not be disclosed without court order." (Rule 2.585(b).) Whether such sealed records should remain sealed requires the court to balance the need for disclosure against the competing need for confidentiality, which may include the need to protect individual security, personal liberty, private property, the public, or the public good. (See, e.g., Evid. Code, § 1040; *Copley Press, Inc. v. Superior Court*, *supra*, 6 Cal.App.4th at p. 112; *Estate of Hearst* (1977) 67 Cal.App.3d 777, 783.)

Here, the court inferably determined Harrison's need for the sealed records to collaterally attack his conviction outweighed the need to keep the records confidential, except as to the personal identifying information of a handful of civilian witnesses, which the court redacted. As we do in analogous situations, we have independently examined the unredacted records in camera. (See, e.g., *People v. Hughes* (2002) 27 Cal.4th 287, 330.) We conclude the court did not abuse its discretion in redacting the personal identifying information of the civilian witnesses. Harrison's need for the information is slight as the witnesses appear to have had only a peripheral role in the incident Harrison seeks to investigate and the redacted documents provide sufficient leads for Harrison to pursue at this juncture. Conversely, the need to keep the witnesses' personal identifying

information confidential is considerable as Harrison has an admitted history of committing retaliatory acts, some violent, against people he believes have directly or indirectly harmed him.

IV

DISPOSITION

The orders are affirmed.

McCONNELL, P. J.

WE CONCUR:

NARES, J.

O'ROURKE, J.